

HONORABLE FRANKLIN D. BURGESS

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

ANTOINE D. JOHNSON, M.D.,

Plaintiff,

vs.

GRAYS HARBOR COMMUNITY  
HOSPITAL, Grays Harbor Community  
Hospital Medical Staff, Grays Harbor  
Community Hospital Governing Board, Ki  
Shin, MD, Tim Troeh, MD, Brent Rowe, MD,  
Gregory May, MD, Daniel Canfield, MD,  
Robin Francisovich, MD, Thomas J.  
Hightower, Shelly Duber, MD and Does 1  
through 50 inclusive,

Defendants.

NO. C06-5502-FDB

**MOTION TO APPOINT  
SPECIAL MASTER TO  
OVERSEE DISCOVERY**

**Friday, May 11, 2007**

**I. RELIEF REQUESTED**

COME NOW DEFENDANTS GRAYS HARBOR COMMUNITY HOSPITAL (GHCH), BRENT ROWE, MD, AND THOMAS J. HIGHTOWER and seek necessary and appropriate relief from Plaintiff's clever, willful, and non-cooperative conduct which is obstructing and making a mockery out of legitimate discovery efforts. Court oversight is truly needed. Expedited procedures for compelling discovery under CR 37(a)(2)(B) will not work because of a lack of cooperation of Plaintiff, and foreseeably recurring motions to compel would unnecessarily tie up Court time. Accordingly,

MOTION TO APPOINT SPECIAL MASTER TO OVERSEE  
DISCOVERY - 1

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**THESE DEFENDANTS HEREBY MOVE** pursuant to Rule 53, Fed. Rules of Civil Procedure, **for APPOINTMENT OF A SPECIAL MASTER TO OVERSEE AND ENFORCE THE RULES OF DISCOVERY**, fees and costs to be shared two-thirds by defendants, collectively, and one-third by Plaintiff, or other equitable division, to have the following authority:

1. To enforce the letter and spirit of Rule 26 providing for orderly requests for and responses to discovery, as well as to encourage the parties' mutual cooperation in attempts to resolve differences on individual discovery matters;

2. To rule upon objections to discovery which are timely and properly asserted;

3. To provide for expedited means to enforce compliance with appropriate discovery requests, including issuing orders compelling discovery and imposing monetary and other sanction for obstructive and/or evasive discovery practices;

4. To attend depositions upon notice and reasonable request of a party upon a showing of good cause that the Special Master should be in attendance to further the interests of full discovery;

5. To make recommendations to the Court to strike claims and/or pleadings for failure to comply with orders of the Special Master; and

6. To take such further action as reasonable and necessary to promote a reasonable and complete pre-trial discovery process.

## II. BACKGROUND

Full discovery disclosure is extremely necessary to reveal the true situation in this case in which the positions of Plaintiff and the defendants are completely at polar opposites. To date in this matter, these defendants have requested, conferred, cajoled, and attempted alternative means to obtain the objects of their discovery into Plaintiff's claims, all in a good faith attempt to gain discovery disclosures from Plaintiff without having to seek Court action. Those efforts have failed miserably. See, Declaration of Sherry H. Rogers in Support of Motion.

1 Plaintiff, who is proceeding *Pro Se*, with the quite obvious oversight and participating  
 2 encouragement of his mother, LaWanda Johnson, has resorted to delays, gamesmanship,  
 3 misstatements if not mistruths, and just plain obstructionism. They are not truly novices in judicial  
 4 matters. Plaintiff, with the help of his mother, pursued a Fair Hearing Arbitration and follow-up  
 5 appellate hearing with Molina Healthcare, who had cancelled Plaintiff's preferred provider status.  
 6 One of Molina's grounds for canceling Plaintiff's preferred provider status was his failure to  
 7 maintain privileges at least one participating provider hospital, such as GHCH. It is troubling that  
 8 Plaintiff and his mother have a history a lack of candor toward tribunals, as evidenced by the  
 9 following findings of the Hon. Gordon L. Godfrey, Judge of the Superior Court for Washington for  
 10 Grays Harbor County, who stated in his letter opinion of October 19, 2004, in Grays Harbor Cause  
 11 No. 03-3-00481-2 regarding representations to the court by Plaintiff and his mother:

12 *The aspersions, innuendo, and outright claims range from the most vile and*  
 13 *vituperative to the incredulous, spurious, and at times bordering on outright*  
 14 *fraudulent.*

15 Judge Godfrey's full written opinion is Exhibit 4 to the Declaration of Sherry H. Rogers. The  
 16 lawsuit before Judge Godfrey is pertinent beyond Plaintiff's lack of candor because the underlying  
 17 events and proceedings occurred concurrently with Plaintiff's lapses in patient care and patient  
 18 endangerment at GHCH.

19 The real genesis of this lawsuit was Plaintiff's breach of quality of care standards and  
 20 protocols at GHCH. In fall 2001, Plaintiff, who was relatively new to medical practice, joined the  
 21 Medical Staff at GHCH on a 1-year initial appointment to the provisional staff. He performed well  
 22 his first year and became a member of the Active Staff on a 2-year appointment, effective November  
 23 2002. At that time, Plaintiff's medical practice was primarily centered at the Broadway Clinic in  
 24 Aberdeen. Then things changed! In 2003, Plaintiff became involved in severe, disturbing,  
 25

1 disruptive domestic disputes that resulted in the proceedings before Judge Godfrey. Plaintiff then  
 2 moved the primary focus of his medical practice away from Aberdeen when he opened Johnson  
 3 Family Practice clinics in Tacoma and Lakewood. This change, understandably, markedly diverted  
 4 Plaintiff from continual close attention to his patients in Aberdeen. It followed that concerns arose  
 5 at over Plaintiff's care for patients at GHCH. In September 2004, Plaintiff was summarily  
 6 suspended from the GHCH Medical Staff for quality of care problems, including patient  
 7 abandonment. Of course, Plaintiff disputed this and asserted inconsistencies and untruths in  
 8 response. Indeed, Plaintiff and his mother have drastically redefined and made trivial patient  
 9 abandonment by labeling it "*Snooze or Lose*." As Plaintiff's mother, LaWanda Johnson, testified at  
 10 the Molina Fair Hearing:  
 11

12 *Suspended. He had never – Well, okay. I had a question about that, because they get*  
 13 *these little things, **snooze or lose**. You know, when you're doctors, you have to sign off*  
 14 *on your charts, and if you're a little bit tardy, you get a "**snooze or lose** " [Emphasis*  
 15 *added.]*

16 See, Exhibit 3 to Declaration of Sherry H. Rogers.

17 Nevertheless, Plaintiff was offered reinstatement subject to completing medical charts and  
 18 temporary monitoring of his patient care. In addition, he was encouraged to submit his application  
 19 for renewal of privileges for 2-years. Apparently believing he no longer needed or wanted  
 20 privileges at GHCH, Plaintiff did not file his application for renewal, and he let his privileges lapse.  
 21 He did not/could not attain privileges elsewhere, except temporary privileges in Pacific County. In  
 22 December 2005, Plaintiff sought to start over again at GHCH and submitted an application for initial  
 23 appointment to the provisional staff of GHCH. This application was inaccurate and incomplete.  
 24 Further, Plaintiff then had a Department of Health action pending against his medical license.  
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1 Finally, one of Plaintiff's peer references refused to vouch for him. Plaintiff's application was  
2 appropriately rejected. Plaintiff commenced this action after losing the Fair Hearing Arbitration and  
3 appeal with Molina, who had canceled Plaintiff's preferred provider status for his failure to maintain  
4 privileges at least one participating provider hospital. Plaintiff claims all of his medical staff  
5 problems were the result of racial discrimination, deprivation of civil rights and other faults of the  
6 hospital and its physicians.

### 7 **III. OBSTRUCTION OF DISCOVERY**

8  
9 On January 8, 2007, these defendants duly served upon Plaintiff written interrogatories and,  
10 separately, requests for production of documents, all in accordance with Rules 26, 33 and 34, Fed.  
11 Rules of Civil Procedure. Although he was granted additional time to respond, as requested, Plaintiff  
12 ended up providing for the most part curt and inappropriate objections. He signed generally only but  
13 did not appear to comply with Rule 26(g)(2) to signify a certification that to the best of his  
14 knowledge that the objections were consistent with law, not interposed for improper purpose, and not  
15 unreasonable. Plaintiff's failure to make discovery impaired the scope and integrity of the Joint  
16 Status Report and Discovery Plan. These defendants have attempted to confer and obtain full  
17 disclosure in response to the written discovery without Court action. Please refer to the Declaration  
18 of Sherry H. Rogers and its attached exhibits in support of this motion. There have been informal  
19 requests to Plaintiff to make discovery, an agreed telephone discovery conference on March 21,  
20 2007, a blocked subpoena to Plaintiff's Broadway Clinic, and just plain double talk, misstatements,  
21 and delays. There is no reasonable prospect that Plaintiff will voluntarily comply with outstanding  
22 discovery requests.  
23  
24  
25

1 Realistically, a Special Master is also needed to guide and oversee some of Plaintiff's  
 2 discovery efforts. He has unwittingly requested quality assurance documents and personal files on  
 3 other physicians statutorily precluded from discovery and admission into evidence under RCW  
 4 70.41.200. He is pursuing determined but spurious efforts to try to show GHCH was a "Public  
 5 Hospital," while in fact it is a private non-profit facility. His efforts obviously are an attempt to  
 6 show "state action" which is necessary to sustain many of the claims in his complaint. Finally,  
 7 Plaintiff has resorted to gamesmanship in submitting new written discovery to some defendants that  
 8 was essentially copied from the discovery to Plaintiff to which he had objected. Clever!

10 In conclusion, all parties and the Court will be well served by the appointment of a Special  
 11 Master to oversee and control pretrial discovery. Although he is proceeding *pro se*, Plaintiff is  
 12 bound to comply with the letter and spirit of the Federal Rules of Civil Procedure. Likewise, these  
 13 defendants should not be hampered in their legitimate discovery efforts by Plaintiff's obstructive  
 14 tactics.

16 Respectfully submitted this 25 day of April 2007.

17 REED McCLURE

19 By Sherry H. Rogers  
 20 Sherry H. Rogers, WSBA #16844  
 21 Attorneys for Defendants Grays Harbor Community  
 22 Hospital, Brent Rowe, MD, and Thomas Hightower  
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